



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-R- INC.

DATE: FEB. 2, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a healthcare service provider, seeks to classify the Beneficiary, a physical therapist, as a member of the professions holding an advanced degree and who is employed in a Schedule A, Group I occupation. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2); section 212a(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i); 20 C.F.R. § 656.5(a). The U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. professional nurses and physical therapists who are able, willing, qualified, and available for these occupations, and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of foreign nationals. 20 C.F.R. § 656.5.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary met the requirements of the job or the classification.

On appeal, the Petitioner submits additional evidence and asserts that the Director's reliance on the Occupational Outlook Handbook was misplaced.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(2)(A) of the Act provides classification to qualified individuals who are members of the professions holding advanced degrees or their equivalent. Petitions for Schedule A occupations do not require the petitioner to test the labor market and obtain a certified ETA Form 9089, Application for Alien Employment Certification, from DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with an uncertified ETA Form 9089, in duplicate. 8 C.F.R. §§ 204.5(a)(2) and (k)(4); *see also* 20 C.F.R. § 656.15.

The implementing regulation at 8 C.F.R. § 204.5(k)(2) defines an "advanced degree" as:

[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the

specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

To show that the Beneficiary has the requisite degree, the regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must demonstrate that the job requires a professional holding an advanced degree. 8 C.F.R. § 204.5(k)(4)(i).

Finally, a physical therapist ultimately seeking admission based on an approved immigrant petition must present a certificate from a credentialing organization listed at 8 C.F.R. § 212.15(e). 8 C.F.R. §§ 212.15(a)(1), (c). The provisions at 8 C.F.R. §§ 212.15(f)(1)(i) and (iii) require that approved credentialing organizations for health care workers verify "[t]hat the alien's education, training, license, and experience are comparable with that required for an American health care worker of the same type" and "[t]hat the alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States." The latter verification, however, is not binding on the Department of Homeland Security (DHS). 8 C.F.R. § 212.15(f)(1)(iii).

II. ANALYSIS

The Petitioner supplied the requisite ETA Form 9089, Application for Permanent Employment Certification (labor certification). On this form, the Petitioner indicated that the job requires a master's degree in physical therapy "or related field," no training or experience, and a license to practice physical therapy in Michigan. The record includes the Beneficiary's master of science degree in kinesiology; his foreign bachelor of physiotherapy, evaluated as equivalent to a U.S. bachelor of science in physical therapy; certification from the [REDACTED] that he meets the requirements of section 212(a)(5)(C) of the Act;¹ and his physical therapy license from the State of Michigan. While the record does demonstrate that the Beneficiary is a member of the professions holding an advanced degree, it does not confirm that he meets the requirements of the job as listed on the labor certification. In addition, the Petitioner

¹ The Petitioner did not submit the [REDACTED] Coursework tool used to justify the certification.

has not shown that it has complied with the Notice of Filing posting requirements for roving employees.

A. Advanced Degree Professional

The Director noted that the classification requires an earned advanced degree or a baccalaureate plus five years of progressive post-baccalaureate experience. 8 C.F.R. § 204.5(k)(3). She then concluded, without explanation, that the Beneficiary did not meet the requirements for the classification. He possesses a U.S. master of science degree in kinesiology. An advanced degree is one above a baccalaureate. *Id.* Given that the Director acknowledged that a degree is required for entry into the field, the Beneficiary is also a professional. Accordingly, he is an advanced degree professional.

B. Job Requirements

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine “the language of the labor certification job requirements” in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS’s interpretation of the job’s requirements, as stated on the labor certification must involve reading and applying the plain language of the application form. *See id.* at 834.

At issue is whether the Beneficiary’s master of science degree in kinesiology is “related” to a degree in physical therapy as required by the labor certification. On appeal, the Petitioner notes that Merriam-Webster online defines kinesiology as “the study of the principles of mechanics and anatomy in relation to human movement.” The same site defines physical therapy as “therapy for the preservation, enhancement, or restoration of movement and physical function.”

More useful than dictionary definitions in determining whether the Beneficiary’s degree is in a related field to physical therapy would be a comparison between his transcript and the curriculum for the master’s degree in physical therapy listed in the ETA Form 9089. The Petitioner, however, did not meet its burden by providing such information. We acknowledge that the primary degree required is no longer offered in the United States, however, it appears to have required significant coursework in anatomy and physiology, pathology, pharmacology, diagnostic imaging, musculoskeletal and cardiopulmonary physical therapy, and 1,050 hours of clinical practice.² This

² Federation of State Boards of Physical Therapy, Coursework Tool 6, 3-6 (2017), https://www.fsbpt.org/Portals/0/Content%20Manager/PDFs/free-resources/CWT6_Rev201610.pdf, accessed January 24, 2018). While [REDACTED] certified the Beneficiary using this tool, the Petitioner did not submit a copy. A review of the tool

educational background supports the duties for the position, which involve reviewing medical histories, including physician's diagnoses and prescriptions, and administering detailed sensory tests, manual muscle tests, range of motion exams, and other evaluation techniques.

Conversely, the transcript for the Beneficiary's master of science in kinesiology reflects that he majored in physical education with a concentration in sports management. He did take one course each in cardiology, biomechanics, and kinesiology, and some courses relating to physical education. However, his final semesters involved primarily sports management, sports and the law, business management of sports, finance and management accounting, marketing management, and a sports management internship. The transcript contains no clinical hours. Given the significant differences in curriculum, the record does not establish that the Beneficiary's specific degree from a physical education department with a concentration in sports management is in a related field to a master's degree in physical therapy.

C. Posting Requirements

The regulation at 20 C.F.R. § 656.15(b)(2) requires that a Petitioner include with a Schedule A designation application evidence that notice of filing the labor certification was given to its employees as prescribed at 20 C.F.R. § 656.10(d). The Petitioner indicated in its cover letter that it provides therapy professional and administrative staff to home care agencies, private clinics, assisted living facilities, rehab facilities, and durable medical equipment companies. The addendum to the Form ETA 9141, Application for Prevailing Wage Determination, reflects that the Beneficiary will travel to client and home sites. The Petitioner advised that it placed the notice of filing in its break room at its headquarters for the necessary time period in January 2017. The Petitioner also sent the notice to employees via email.

According to the DOL's published guidance, the Petitioner did not comply with the posting requirements. That information states that if the employer knows where the foreign national will be placed, it must post the notice at that worksite *and* publish the notice internally using in-house media, through print or electronic means.³ If the employer does not know where the individual will be placed, it must post the notice at the worksite of all of its clients *and* publish the notice internally through print or electronic means. Based on this information, it is not sufficient that the Petitioner alerted its roving employees through email, it was also required to post the notice at either the client worksite where the Beneficiary will work, or, if unknown, at all of its client worksites. The Petitioner has not affirmed that it did so.

and the Beneficiary's transcript suggests that he must have satisfied many of those requirements with his foreign undergraduate degree.

³ OFLC Frequently Asked Questions and Answers: Notice of Filing, "12. Where must I post a Notice of Filing for a permanent labor certification for roving employees?", <https://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#q!176>, accessed December 12, 2017, and incorporated into the record of proceeding.

III. CONCLUSION

The Beneficiary does not meet the job requirements specified on the labor certification and the Petitioner did not comply with the notice of filing posting requirements for roving employees.

ORDER: The appeal is dismissed.

Cite as *Matter of A-R- Inc.*, ID# 853156 (AAO Feb. 2, 2018)